

26 October 1951

SUBJECT: Dual Compensation-Retired Officers Employed by Government Corporations
OGC Has Reviewed

1. Is an officer (or employee) of a corporation owned by the United States, an officer of the United States within the prohibitions of the dual compensation laws?

a. Tests which would indicate that he is not:

1. If the acts of the Corporation are not subject to the supervision, control, or audit by the Comptroller General (71 Ct. Cl. 421)
2. If the Corporation has the power and liberty of action of other Corporations, including the power to employ and discharge at will all operating officials and employees. (71 Ct. Cl. 421)
3. Appointment of officers and employees made not by the President, Congress or by or through the Executive Departments and agencies, but by the Corporation alone. (U.S. v. Monat, 124 U.S. 303; U.S. v. Strang, 254 U.S. 491)
4. Salary of the official not subject to civil service scales and is paid by the corporation, not by appropriations. (71 Ct. Cl. 421)

b. Conversely, unless all of these points are answered affirmatively the officer is probably an officer of the United States

2. The rule of the Strang and Dalton cases is very limited and was applied in the former to avoid finding an officer of the Fleet Corporation guilty of violation Section 41 of the Criminal code.

a. The Attorney General has found that employees of the same corporation were employees of the United States for purposes of the compensation laws (34 op. A.G. 120), the Civil Service Regulations and the Retirement Act (37 op. A.G. 7).

b. In distinguishing these holdings from that of the Strang case he noted that it was found therein that employees of the Corporation were not agents under the true intent of the Criminal Section, not that they were not employees of the United States.

25X1C 3. It would appear that [REDACTED] could not take both the salary of his new position and his retirement pay. The facts indicate that he is paid by [REDACTED] a private corporation. This alone is sufficient deviation from the exception of the Dalton case to make the rule inapplicable. Nor is his retirement for disability shown to be under the exceptions granted in 5 U.S.C. 62.

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